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 IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH - CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2007 MAY 22 P 1:44

DISTRICT OF UTAH

DALE HERRERA

Petitioner,

vs.

MICHAEL J. ASTRUE,<sup>1</sup> Commissioner,  
Social Security Administration

Respondent.

BY: \_\_\_\_\_  
DEPUTY CLERK**ORDER**Case No. 2:05-CV-506 DB  
Judge Dee Benson

In July 2002, Petitioner Dale Herrera applied for Disability Insurance Benefits and Supplementary Security Income pursuant to Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-434, 1381-1383c, basing his claim on a combination of physical and psychological ailments. Mr. Herrera's claims were denied initially, upon rehearing, after a hearing before an administrative law judge, and by the agency's appeals council. Mr. Herrera then appealed to this Court, arguing the Commissioner erred (1) in finding that his borderline intellectual functioning and multiple cervical spine disc herniations did not constitute distinct and medically determinable severe impairments, (2) in finding his impairments neither individually nor in combination equaled a listed impairment, and (3) in finding that his residual functional capacity permitted him to perform alternative work. Mr. Herrera appealed to this Court and his case was referred to a magistrate judge, who now recommends that the case be remanded to the Commissioner for further development of the record. Neither party filed an objection to the

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<sup>1</sup>Michael Astrue replaced Jo Anne Barnhart as the Commissioner of the Social Security Administration on February 1, 2007, and takes her place as respondent in this case pursuant to Federal Rule of Civil Procedure 25(d)(1).

magistrate judge's report and recommendation.

Having reviewed the report and recommendation, the record, and the relevant law, the Court concludes the case must be remanded to the Commissioner for the reasons given in the magistrate judge's report and recommendation. The Court accordingly adopts the report and recommendation and remands the case to the Commissioner so that he may develop the record and then reevaluate his findings regarding Mr. Herrera's intellectual functioning and disc herniations.

It is so ordered.

Dated this 22<sup>nd</sup> day of May, 2007.

  
Dee Benson  
United States District Judge